

# PERMANENT RECORD

ORDINANCE NO. G-2024-02 AMENDED

INTRODUCING: MARY ALLEN

**PASSED**

## AN ORDINANCE REPEALING AND REPLACING CHAPTER 16.05 OF THE EVANSVILLE MUNICIPAL CODE (ENVIRONMENTAL CODE)

WHEREAS, the City of Evansville desires to lead the region in collaborative action to improve air quality and climate resilience for a healthy, vibrant future;

WHEREAS, the City of Evansville believes that it is in the best interest of the City and its citizens to create an agency to be known as the Evansville Climate Collaborative (the "Agency") to lead the City and the region to improve air quality and climate resilience;

WHEREAS, the Agency shall be charged with the responsibility to develop and implement comprehensive plans and programs such as the Evansville Climate Action Plan to improve environmental quality, resource sustainability and resilience to climate impacts;

WHEREAS, the Agency shall also serve to facilitate communication and collaboration between other agencies, departments, organizations, boards, businesses and communities working on environmental quality, sustainability and resilience initiatives; and

WHEREAS, the City believes that it is in the best interest of the City to repeal Chapter 16.05 of the Evansville Municipal Code and replace Chapter 16.05 of the Evansville Municipal Code with this Ordinance which mirrors, in many respects, the existing Chapter but also creates other strategies and goals to enhance the ability of the Agency to achieve the purposes of this Ordinance.

NOW, THEREFORE, be it ordained by the Common Council of the City of Evansville, Indiana, as follows:

Section 1. Repeal and Replace Chapter 16.05 of the Evansville Municipal Code. Chapter 16.05 of the Evansville Municipal Code is hereby repealed in its entirety as follows and the following provisions shall be substituted in its place:

### Chapter 16.05 ENVIRONMENTAL CODE

#### 16.05.010 Purpose.

The City of Evansville shall regulate air pollution sources and work collaboratively to reduce air emissions so as to improve air quality and climate resilience for the health and well-being of all citizens.

The regulations created by this chapter shall apply within the limits of the City of Evansville, Indiana. The functions created by this chapter shall be in collaboration with and for the benefit of the greater Evansville region.

Where reference is made in this chapter to State or Federal laws or regulations or the standards or recommended practices of national technical societies, or similar organizations, that information

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*Gama Windherst*  
City Clerk

shall be considered a part of this chapter in the same manner and to the same extent as if it had been fully reproduced herein.

To the extent that any provisions of 326 IAC are incorporated herein, any amendments to 326 IAC as may be made from time to time are also incorporated herein by this reference. Whenever there is a conflict between the incorporated 326 IAC provisions and the municipal code, the more stringent shall apply.

(A) Incorporation by Reference. The following portions of 326 IAC are hereby incorporated by reference:

- 326 IAC 1-1 General Provisions
- 326 IAC 1-2 Definitions
- 326 IAC 1-3 Ambient Air Quality Standards
- 326 IAC 1-5 Episode Alert Levels
- 326 IAC 1-6 Malfunctions
- 326 IAC 1-7 Stack Height Provisions
- 326 IAC 2 Permit Review Rules
- 326 IAC 3 Monitoring Requirements
- 326 IAC 4-2 Incinerators
- 326 IAC 5 Opacity Regulations
- 326 IAC 6-2, Particulate Emission Limitations for Sources of Indirect Heating
- 6-3, 6.5-8 Particulate Rules
- 326 IAC 7 Sulfur Dioxide Rules
- 326 IAC 9 Carbon Monoxide Rules
- 326 IAC 10 Nitrogen Oxide Rules
- 326 IAC 11 Emissions Limitations for Specific Types of Operations
- 326 IAC 12 New Source Performance Standards
- 326 IAC 14 Emission Standards for Hazardous Air Pollutants
- 326 IAC 20 Hazardous Air Pollutants
- 326 IAC 22 Stratospheric Ozone Protection

## **16.05.020 Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Any additional definitions may be found in the applicable portion(s) of the municipal code, or State and Federal references.

“Agency” means the Evansville Climate Collaborative (ECC) – a City of Evansville agency created by this chapter.

“Air contaminant” means any solid, semisolid, liquid, or gaseous matter, including but not limited to regulated pollutants, as defined by the Indiana Air Pollution Control Board, which is or may be injurious to human health, plant or animal life, or property; interferes unreasonably with the enjoyment of life or property; or is otherwise in violation of this chapter or rules adopted under this chapter.

“Application” means the process of seeking advance approval from the Agency, in either verbal or written form.

“ASME” means the American Society of Mechanical Engineers.

“ASTM” means the American Society of Testing Materials.

“Board” means the Climate Collaborative Board to serve as an advisory board for the Agency, created by this chapter.

“Certificate of operation,” “operating permit” or “permit” means a certificate issued by the Agency authorizing the use of any process, fuel-burning, refuse-burning, or control equipment for the period indicated, after it has been found that it can be operated in compliance with the requirements of this chapter.

“Chapter” means this Chapter 16.05 EMC. .

“City” means the City of Evansville, Indiana.

“Clean wood products” means wood products that are not coated with stain, paint, glue, or other coating material.

“Commissioner” means Commissioner of the Indiana Department of Environmental Management.

“Contaminant” means any solid, semisolid, liquid, or gaseous matter, including, but not limited to, regulated pollutants, as defined by the Indiana Air Pollution Control Board, which is or may be injurious to human health, plant or animal life, or property; interferes unreasonably with the enjoyment of life or property; or is otherwise in violation of this chapter or rules adopted under this chapter.

“Council” means the Common Council of the City of Evansville, Indiana.

“Director” means the Director of the Evansville Climate Collaborative

“Emergency burning” means the burning of clean wood waste or deceased animals caused by a natural disaster or an uncontrolled event such as a tornado, high winds, earthquake, explosion, hail storm, rain storm, or ice storm.

“Emission” means the act of passing into the atmosphere of an air contaminant, or the material so passed into the atmosphere.

Exemption. See 326 IAC 2-5.1-1. A determination by the Indiana Department of Environmental Management that a facility meets the criteria for an exemption under 326 IAC 2-1.1-3 or is not specifically required to obtain a registration or permit under 326 IAC 2.

“Federally enforceable State operating permit (FESOP)” means an operating permit issued pursuant to 326 IAC 2-8.

“He” or “his” shall refer to both sexes and shall not be construed to limit the eligibility for any position to males.

“IDEM” means Indiana Department of Environmental Management.

“Indirect heaters” means fuel-burning equipment in which neither the fuel nor the products of combustion come into contact with the process material.

“Mayor” means the Mayor of the City of Evansville, Indiana.

"Minor source operating permit (MSOP)" means an operating permit issued pursuant to 326 IAC 2-6.1.

"Noncombustible container" means a container that can withstand a temperature of 1,500 degrees Fahrenheit.

"Nonphotochemically reactive hydrocarbon" or "negligibly photochemically reactive compounds" refers to the list of organic compounds that have been determined to have negligible photochemical reactivity and are thereby excluded from the definition of volatile organic compounds (VOC) in 40 CFR 51.100(s)(1).

"Opacity" means the quality which renders substances partially or wholly impervious to rays of light (not including condensed water vapor).

"Open burning" means burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney.

"Operating Permit" See "Certificate of operation."

"Part 70 permit" means an operating permit issued pursuant to 326 IAC 2-7 (see also "Title V permit").

"Particulate matter" means any airborne, finely divided solid or liquid material, excluding uncombined water, with an aerodynamic diameter smaller than 100 micrometers ( $\mu\text{m}$ ).

"Permit" See "Certificate of operation."

"Permit by rule (PBR)" means an operating level determination issued pursuant to 326 IAC 2-10.

"Pollution" means the presence in the environment of one or a combination of substances that are or may tend to be injurious to the quality of human, plant or animal life, or property, or that interferes with the comfortable enjoyment of life or property.

"Portable source" means a source which can be readily moved to a different location and operated as a stationary source.

"PPB" means parts per billion.

"PPM" means parts per million.

"Registration" See 326 IAC 2-5.1-2. A determination by IDEM that a facility does not meet the criteria for an operating permit, but must register with IDEM.

"Regulated pollutant" means any pollutant for which a rule establishing emission limitations or requirements has been promulgated by the Board or by the State of Indiana's Air Pollution Control Board.

"Salvage operation" means any procedure conducted in whole or in part for the reclaiming of any matter of value which is separated from worthless matter.

"Smoke" means gas-borne particles resulting from incomplete combustion, containing ash or other materials.

"Solid waste" means any garbage, refuse, or sludge from an air pollution control facility, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or from community activities.

"Source-specific operating agreement (SSOA)" means an operating permit issued pursuant to 326 IAC 2-9.

"Spray paint area" means any area utilized for application of paint and other surface-coating materials by spraying the paint or other surface-coating materials onto the substrate.

"Spray paint booth" means a partially or completely enclosed area, equipped to provide ventilation and particulate control, utilized for application of paint and other surface-coating materials by spraying the paint or other surface-coating materials onto the substrate.

"Substrate" means the surface onto which coatings or surface preparation products are applied.

"Title V permit" means an operating permit issued pursuant to 326 IAC 2-7 (see also "Part 70 permit").

" $\mu\text{g}/\text{m}^3$ " means microgram per cubic meter.

"Volatile organic compound (VOC)" means:

(1) Any compound of carbon excluding the following:

(a) Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(b) Any organic compound which has been determined to have negligible photochemical reactivity listed in "nonphotochemically reactive hydrocarbon." VOC content shall be measured in accordance with 326 IAC 8-1-4.

(c) Vegetable oils.

(2) For purposes of determining compliance with emission limits, volatile organic compounds will be measured by the test methods in 326 IAC or 40 CFR 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive (sic) compounds may be excluded as volatile organic compounds if the amount of such compounds is accurately quantified and such exclusion is approved by the Commissioner.

"Waste" means human or animal excrement, garbage, or any worthless matter.

"Wood products" means material consisting of wood.

### **16.05.030 Establishment.**

(A) The City hereby establishes the Evansville Climate Collaborative (ECC) to lead the region in collective action to improve air quality and climate resilience for a healthy, vibrant future.

The powers and functions of the Agency shall include the following:

- (1) Develop and implement comprehensive plans and programs, such as the Evansville Climate Action Plan, to improve environmental quality, resource sustainability, and resilience to climate impacts.
- (2) Facilitate communication and collaboration between agencies, departments, organizations, boards, businesses, and communities working on environmental quality, sustainability, and resilience initiatives.
- (3) Collect and communicate data on community-wide greenhouse gas emissions, air quality, and climate action plan impacts.
- (4) Conduct education and outreach to increase public awareness of and engagement in sustainability and resilience efforts and opportunities.
- (5) Promote a coordinated regional effort to achieve sustainability and resilience programs, policies, and practices that will benefit the Greater Evansville region.
- (6) Collaborate with professionals and agencies across the nation to grow resources, funding, and capacity for sustainability and resilience projects in the Greater Evansville region.
- (7) Assist air pollution sources on compliance with air quality standards and regulations through surveillance, inspection, permits, enforcement, and technical assistance, in partnership with state and federal agencies.
- (8) Provide a local resource and response for air quality complaints and violations so to protect public health, welfare, and safety, in partnership with state and federal agencies.

(B) The Agency is hereby designated as the Air Pollution Agency for the City for all purposes of the Federal Clean Air Act, Public Law 88-206, approved December 17, 1963, as amended.

(C) The city hereby establishes the Climate Collaborative Board to serve as an advisory board to the Agency.

The purpose and intent of this Board is to:

- (1) Advise the City administration and the Common Council of the City on matters relevant to the mission and functions of the Agency, including changes to this chapter.
- (2) Work creatively and collaboratively with the Director to further the mission and functions of the Agency.

## **16.05.040**

### **16.05.050 Director of the Evansville Climate Collaborative .**

(A) There shall be a Director of the Evansville Climate Collaborative .

(B) The Director of the Evansville Climate Collaborative shall report to the Mayor.

(C) The Director shall perform the duties required by this chapter and the Board.

(D) The Director shall be qualified by education and experience to supervise and direct the activities of the Agency.

(E) The Director may employ additional personnel necessary for the operation of the Agency as they are budgeted.

(F) Powers designated to the Director in this chapter may be delegated to appropriate Agency personnel.

### **16.05.060 Evansville Climate Collaborative Board.**

(A) The Climate Collaborative Board will serve as an advisory board to the Agency. The Board shall study and recommend to the City administration and the Council appropriate policies, procedures, and actions relevant to the mission and functions of the Agency.

(B) Appointments. The Board shall consist of five (5) members to be appointed by the Mayor.

(C) Eligibility. Members shall be a resident of Vanderburgh County. No member of the Board shall hold any elective office. No more than one member of the Board shall be employed by the same employer.

(D) Terms. Appointments for voting members shall be for four (4) year terms. Terms shall begin on January 31 of the specified year, members shall serve no more than two (2) consecutive terms. Members serve at the pleasure of the Mayor and may be removed and replaced at any time by the Mayor.

(E) Vacancies. Appointments to fill resignations or vacancies shall be for the unexpired term remaining of the member being replaced. Subject to the provisions of EMC 16.05.060(D), a member is eligible for reappointment. A member whose term of appointment has expired shall remain in the office until such time as a successor shall be appointed. Vacancies on the Board shall not impair the ability of the remaining members to exercise the duties of the Board.

(F) Roles. The Board shall elect a chairman and vice-chairman. The Board shall request an employee of the Agency to serve as secretary for the Board. A quorum shall consist of three (3) voting members at all times. The Director shall be an advisor to the Board.

(G) Meetings. The Board shall hold a regular meeting once a month and special meetings at such additional times as may be called by the chairman or vice-chairman. A special meeting shall be called upon request of at least three members of the Board. The Board shall keep minutes of its proceedings that shall record the official actions of the Board and the vote of each member thereon. If any member fails to attend (3) successive meetings without approval of the chairman, the Board may declare the seat vacant and recommend a new appointment to the appointing authority.

(H) The Board may draft or review all proposed revisions and additions of this chapter and ordinances concerning standards or requirements contemplated for inclusion in this chapter. The Board shall forward all proposed revisions, additions and ordinances to the Council.

(I) The Board shall consider appeals of Agency actions as described in EMC 16.05.080.

(J) All hearings conducted by the Board be open to the public and conducted in accordance with IC 5-14-1.5-5 (Public Notice).

### **16.05.070 Enforcement.**

(A) The Director and agents of the Evansville Climate Collaborative shall determine when violations of this chapter have been committed. The Director may extend authority to determine open burning violations of this chapter to the Evansville Fire Department.

(B) The Director may exercise discretion to take informal action to compel violators to comply with the provisions of this chapter. Informal action shall include, but not be limited to:

(1) Warning Letter. If the Director has reason to believe that any person or emission from any source may violate or may have violated any provision of this chapter, a warning letter may be issued to the person, owner, or operator of the source in question. The warning letter shall describe the alleged or potential violation and, if appropriate, shall suggest what should be done to comply. There shall be no penalty associated with a warning letter. The Director may provide for follow-up inspections of each source for which a warning letter has been issued to determine whether compliance has been achieved or if additional procedures of this chapter should be invoked.

(2) Letter of Violation. If evidence of a violation of any section of this chapter is brought to the attention of the Director, or if any member of the Agency observes a violation, the Director shall issue a letter of violation to the owner or operator of the source in question.

(3) Citation. If evidence of a violation of any section of this chapter is brought to the attention of the Director, or if any member of the Agency observes a violation, the Director shall, in addition to the letter of violation, issue a citation with monetary penalties (fines) in accordance with EMC 16.05.510.

(C) Each rule of this chapter and each day wherein a violation of this chapter occurs shall constitute a separate offense and penalty. Any act or emission of air contaminants from any single or multiple sources in violation or in excess of the limitations established in this chapter shall be unlawful, and may be ordered abated by the Director. Such abatement may be in addition to the fines and penalties herein provided.

(D) If the Director finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, the Director may order the person responsible for the operation in question to reduce or discontinue emissions immediately.

(E) If the Director's informal action fails to remedy the violations, formal action may be undertaken against the violator in accordance with EMC 1.05.170 and 1.05.180.

## **16.05.080 Appeals.**

(A) Any person may appeal action by the Agency to the Board. Appeals to the Board shall be initiated by filing with the Director a written appeal specifying the grounds thereof and the relief sought. This appeal shall be initiated within 30 days after the issuance of the decision, ruling, requirement, rule, regulation, or order, or failure to act upon a proper Application.

(B) The Agency shall furnish to the Board papers and other materials relating to the appeal. The Board, not more than 10 working days after the date of receipt of the filing, shall give notice by mail to all interested parties of the date, time and place of a hearing on the appeal. The Board may, at its discretion, grant continuances. The appeal shall be a stay of the Agency's action until final action by the Board.

(C) All hearings conducted by the Board shall be open to the public and conducted in accordance with Indiana Code 5-14-1.5-5 (Public Notice).



(D) If the Director has ordered a reduction in emissions or discontinuance of operations pursuant to EMC 16.05.070(D), the Board shall fix a place and time not less than 48 hours or more than 72 hours (excluding Saturdays, Sundays and legal holidays) thereafter for a hearing to be held before the Board. Not more than 24 hours after the commencement of such a hearing the Board shall affirm, modify or set aside the order of the Director.

#### **16.05.090 Variance for operation.**

(A) Variance for the operation of a contaminant source in violation of any applicable emission standard contained in this chapter may be granted by the Director only after a compliance schedule has been submitted by the owner/operator of the source and the Director has granted approval. Such variances may not be less stringent than applicable State and Federal rules.

(B) Said equipment or property shall not be in violation of this chapter so long as the agreed-upon compliance schedule is observed.

(C) If the compliance schedule is not followed, the Director may, after notice, suspend the compliance schedule and issue a letter of violation and may also issue a citation. Proof of compliance with the compliance schedule shall be the responsibility of the owner/operator.

#### **16.05.100 Reserved for future use.**

Reserved.

#### **16.05.110 Right of entry to inspect.**

(A) Upon notice and presentation of proper credentials, the Director or his agents are authorized and directed to enforce all the provisions of this chapter and shall have at all times the right to enter and inspect any private or public property for cause.

(B) Entry may be effected by consent of the rightful occupant of the premises. If entry is denied, a court order may be sought by the Director or his agents in the Vanderburgh Superior or Circuit Court to permit such entry upon the property.

(C) Any person interfering with the Director or his agents in the performances of their duties is in violation of this chapter and shall be liable to the penalties provided in EMC 16.05.510.

(D) Denial of entry without a warrant shall not be considered as interference.

#### **16.05.120 Reserved for future use.**

Reserved

#### **16.05.130 Confidentiality of records.**

“Confidential information” means any information that is entitled to treatment as, or that has been determined to be, confidential information under rule 326 IAC 17.1, and includes any information submitted to the Board or Agency under claim of confidentiality pending a final determination of the claim. Effluent or emission data shall not be confidential information.

#### **16.05.140 Acts prohibited.**

(A) It shall constitute a nuisance, and be a violation of this chapter, for any person to permit or cause the emission of air contaminants that are detrimental to or endanger the health, safety, or comfort of any person or the public, or have a tendency to cause injury or damage to property or business. This provision shall specifically include, but not be limited to, the burning of garbage, rubbish, trash, or any other material; or any process which produces smoke, particulate matter, or odor as to interfere with the comfortable enjoyment of life or property or the conduct of business.

(B) It shall be a violation of this chapter for any person to operate or maintain, or cause to be operated or maintained, any premises, open area, right-of-way, storage pile of materials, vehicles, construction, alteration, sandblasting, demolition, wrecking operation, earth moving, surface-coating operation, or any other enterprise, which involves any material or substance likely to be scattered by the wind, or susceptible to being wind-borne, without taking reasonable precautions or measures to minimize fugitive particulate matter including, but not limited to, alternate materials, temporary enclosures, paving, watering, applying dust suppressant, limiting vehicle traffic, or reducing vehicle speed.

(C) No person shall deposit any contaminants upon the land in such place and manner that create or would create pollution, or deposit or cause or allow the deposit of any contaminants or solid waste upon the land except through the use of sanitary landfills, composting, garbage grinding, or other methods acceptable to the State Solid Waste Management Board.

(D) No person shall apply or allow the application of used oil to any ground surface.

The term "used oil" shall be defined as:

(1) Any oil that has been refined from crude oil; or

(2) Any synthetic oil:

(a) That has been used and as a result of such use is contaminated by physical or chemical impurities.

(b) Any used oil will be presumed to be contaminated by physical or chemical impurities. It shall be the burden of the owner or operator to refute this presumption by providing acceptable scientific data to the Director.

|| **16.05.150 Reserved for future use.**

Reserved.

|| **16.05.160 Reserved for future use.**

Reserved.

|| **16.05.170 Reserved for future use.**

Reserved.

|| **16.05.180 Fugitive particulate matter.**

(A) Applicability of Rule. This section shall apply to all sources of fugitive particulate matter.

(B) Definitions. Definitions of terms as set forth in this section:

"As-needed basis" means the frequency of application necessary to maintain compliance with the requirements of this section.

"Construction site access" means a stabilized stone surface at all points of ingress or egress to a construction site for the purpose of capturing or detaining sediment carried by tires of vehicles or other equipment entering or exiting the project site.

"Fugitive particulate matter" means the generation of particulate matter to the extent that some portion of the material escapes beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located or the activity causing the fugitive particulate matter emissions is taking place.

"Ground level" means from zero inches to 30 feet above the ground.

"Manufacturing process" means any single or series of actions, operations, or treatments in which a mechanical, physical, or chemical transformation of materials occurs that emits or has the potential to emit particulate in the production of the product. The term includes transference, conveyance, or repair of a product.

"Notice of intent letter" means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for a specific NPDES permit and includes information as required in 327 IAC 15-3 and the general permit rule.

"Overspray" means the particulate matter resulting from surface-coating activities not deposited on the part or surface for which it was intended.

"Particulate matter" means any finely divided solid or liquid material, excluding uncombined water.

"Paved parking lot" means any asphalt- or concrete-surfaced parcel of land located on the property of, or owned by, an individual or company upon which automobiles or other motorized vehicles are parked.

"Paved road" means any asphalt- or concrete-surfaced thoroughfare or right-of-way designed or used for vehicular traffic and located on the property of, or owned by, an individual or company.

"Surface coating" means the application of powder coating or a solvent or water-based coating to a surface that imparts protective, functional, or decorative films in which the application emits, or has the potential to emit, particulate matter. Surface coating does not include galvanizing.

"Unpaved parking lot" means any parcel of land located on the property of, or owned by, an individual or company lacking asphalt or concrete surfacing materials upon which automobiles or other motorized vehicles are parked.

"Unpaved roads" means any thoroughfare or right-of-way, other than a paved road as defined in this section, which is designed or used for vehicular traffic located on the property of, or owned by, an individual or company.

"Used oil" means:

- (1) Any oil that has been refined from crude oil that has been used and as a result of such use is contaminated by physical or chemical impurities; or

(2) Any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities.

(3) Any used oil will be presumed to be contaminated by physical or chemical impurities. It shall be the burden of the owner or operator to refute this presumption by providing acceptable scientific data to the Director.

(C) Exemptions. The following may be exempted from the requirements of this section:

(1) Release of steam not in combination with any other gaseous or particulate pollutants unless the steam creates a nuisance or hazard.

(2) Fugitive particulate matter resulting from demolition where every reasonable precaution has been taken in minimizing fugitive particulate matter emissions.

(3) Fugitive particulate matter caused by adverse meteorological conditions.

(4) Fugitive particulate matter from parking areas and access drives on properties zoned R-1, R-2, or agricultural, so long as the actual usage of the property is in conformance with the zoning.

(D) Used Oil – Application of Used Oil. No person shall apply or allow the application of used oil to any ground surface.

(E) Violations.

(1) The owner or operator of a source will be considered in violation of this section if evidence is obtained to verify the subject fugitive particulate matter originated from that source.

(2) A source or sources generating fugitive particulate matter shall be in violation of this section if:

(a) A qualified representative of the Director observes fugitive particulate matter visibly crossing the site boundary or property line at ground level.

(b) A qualified representative of the Director observes mud or soil tracked from the site boundaries onto a public street, thoroughfare, road, or public or private right-of-way.

(c) A sworn law enforcement official observes fugitive particulate matter visibly crossing the site boundary or property line at ground level.

(3) Photographs or video evidence may be utilized to determine a violation of this section.

(F) Construction or Demolition Activities. Fugitive particulate matter resulting from construction or demolition activities shall be controlled.

(1) Construction Activities Disturbing over One Acre.

(a) For activities subject to 327 IAC 15-5, a stable construction site access shall be provided at all points of construction traffic ingress and egress to the project site.

(b) The site operator, as designated on the notice of intent letter issued pursuant to 327 IAC 15-5-2(d)(1), shall be considered in violation of this section if a qualified representative of the Director visually verifies mud or soil tracked from the construction site onto a public street, road, alley, highway, public or private right-of-way or other thoroughfare.

(i) In addition to the site operator, the Director may also determine other companies or individuals are in violation of this section.

(ii) Failure to obtain a notice of intent letter or to provide a notice of intent letter upon request by the Director shall be a violation of this section.

(G) Motor Vehicle Sources. Fugitive particulate matter resulting from transportation or hauling of loose material such as, but not limited to, soil, sand, gravel, coal, grain, and other similar materials shall be controlled.

(1) No vehicle shall be driven or moved on any public street, road, alley, highway, or other thoroughfare, unless such vehicle is so constructed as to prevent its contents from dripping, sifting, leaking, or otherwise escaping therefrom so as to create or result in an emission of particulate matter.

(2) Soil, sand, gravel, coal, grain and other similar materials may be hauled in open trucks as long as the material is not allowed to fall on a public or private way and the requirements of subsection (G)(3) of this section are complied with.

(3) Vehicles hauling soil, sand, gravel, coal, grain and other similar materials on a public or private way without a cover shall be loaded in the following manner:

(a) The peak, or highest point, of the load shall not be higher than the top of the vehicle cab or cargo box, whichever is lower.

(b) All vehicles must have a leakproof gate. Pickup trucks and other vehicles with a low-hinged tailgate must have a liner to prevent leakage.

(c) All areas of the vehicle not within the confines of the cargo box shall be free of loose materials.

(d) The vehicle cargo area, including but not limited to the bottom, tailgate hinges, latches and sideboards, must be in a substantial state of repair to prevent shifting or leakage of the cargo.

(H) Stationary Sources and Manufacturing Processes.

(1) Fugitive particulate matter emissions escaping through building openings such as, but not limited to, doors, windows, powered or unpowered ventilators, roof monitors, or stacks shall be controlled. Sources shall use one or more of the following measures:

(a) Installing a removable filter over appropriate building openings.

(b) Enclosure of the emission source with venting of emissions to a particulate control device.

(c) A written in-house operating procedure and/or maintenance program consisting of:

(i) Proper maintenance of the process equipment and particulate collection system.

(ii) Substitution of the process equipment, material, and/or operating procedures that ensure compliance with this section.

(iii) An equivalent alternate measure acceptable to the Director.

(2) Failure to follow the in-house operating procedure and/or maintenance programs will be considered a violation of this section.

(3) If fugitive particulate matter emissions continue, the Director may require the source to revise the in-house operating procedure and/or maintenance plan.

(4) The Director may require inspection, record keeping and/or reporting sufficient to document compliance with the in-house operating procedure and/or maintenance plan.

(5) Fugitive particulate matter emissions from sources such as, but not limited to, unpaved parking lots, unpaved lots and unpaved private access roads shall be controlled.

(6) Fugitive particulate matter emissions from sources such as, but not limited to, open storage piles, outdoor conveying, loading and unloading of loose materials such as, but not limited to, sand, gravel, stone, grain and coal shall be controlled.

(7) Particulate emissions from surface-coating and manufacturing activities such as, but not limited to, reinforced plastics composites and graphic arts processes shall be controlled by a control device such as a temporary or permanent enclosure, a dry particulate filter, waterwash, or an equivalent control device subject to the following requirements:

(a) The source shall operate the control device according to the manufacturer's specifications.

(b) The control device must be in place and/or operating whenever surface-coating or manufacturing activities are taking place.

(c) The waterwash must be operating and the water curtain shall completely cover the surface whenever surface-coating activities are taking place.

(d) Dry particulate filters (also known as fabric filters) must be intact, free from holes or gaps and in place whenever surface-coating activities are taking place.

(e) The owner or operator must perform visual inspections for overspray once a month while the spray paint booth is in operation.

(f) The owner or operator must perform exterior perimeter checks once per calendar quarter, for areas potentially affected by overspray.

(g) A record must be kept of the visual inspections required by subsection (H)(7)(e) of this section and must be available for review by the Agency for the three previous years. If no surface-coating or manufacturing activity has occurred during that calendar month, no visual inspection is required; however, a notation shall be made on the records to that effect.

(h) A record must be kept of the quarterly perimeter checks required by subsection (H)(7)(f) of this section and must be available for review by the Agency for the three previous years. If no surface-coating or manufacturing activity has occurred during that calendar quarter, no quarterly exterior perimeter check is required; however, a notation shall be made on the records to that effect.

(i) If overspray is visibly or physically detected at the point of exhaust, or accumulates on the roof, the ground or other surfaces, the source shall inspect the control device, waterwash or fabric filters and shall:

(i) Repair the control device so that no overspray is visible or physically detectable at the point of exhaust; or

(ii) Install additional filter media at the point of exhaust (after-filter) sufficient that no overspray is detectable beyond the after-filter; or

(iii) Shut down the process; or

(iv) Initiate alternative equivalent control measures as approved by the Director.

(j) If overspray is visibly or physically detected, the source shall report the incident to the Agency within two business days of the overspray occurrence. This reporting may be in the form of a telephone call, a facsimile or an e-mail.

(k) The source shall maintain a record of the action(s) taken as a result of the inspection required by subsection (H)(7)(i) of this section, any repairs of the control device, or change in operations, so that overspray is not visibly or physically detected at the point of exhaust, on the roof, the ground or other surfaces.

(8) The following surface-coating manufacturing processes are exempt from this subsection:

(a) Surface coating using dip coating;

(b) Surface coating using roll coating;

(c) Surface coating using flow coating;

(d) Surface coating using brush coating;

(e) Surface coating using aerosol cans.

## **16.05.190 Reserved for future use.**

Reserved.

## 16.05.200 Open burning regulations.

No person shall burn any material except as allowed by this section. Fireworks are specifically excluded from regulation under this section.

(A) Open Burning Ban. An open burning ban for all types of fires regulated under this section may be issued by the Director or the Fire Department with jurisdiction when conditions set forth in subsection (B)(11) of this section exist. The Director may grant individual exemptions to the open burning ban.

(B) General Requirements. All burning under this section shall be subject to the following:

- (1) All burning must comply with other State and Federal laws including, but not limited to, 40 CFR 61 Subpart M (National Emissions Standards for Asbestos) and the City's municipal code.
- (2) Except as specifically provided in this section, only clean wood products shall be burned.
- (3) No rootballs or stumps shall be burned.
- (4) No waste that is generated as a result of a routine business operation shall be burned.
- (5) No asbestos-containing material shall be burned.
- (6) No poison ivy, poison oak, poison sumac or similar allergenic material shall be burned.
- (7) No material contaminated or treated with preservatives, paint, coatings or pesticides shall be burned.
- (8) The fire shall be extinguished if the fire creates a pollution problem, a threat to public health, a nuisance or a fire hazard.
- (9) All fires must be attended at all times during burning until completely extinguished.
- (10) Adequate firefighting equipment shall be on site for extinguishing purposes during burning times.
- (11) No burning shall be conducted during unfavorable meteorological conditions, including, but not limited to, temperature inversions, high winds, air stagnation, an ozone alert, a particulate alert, a burn ban, and air pollution episodes as defined in 326 IAC 1-5, or extremely dry conditions.
  - (a) During a burn ban, only fires in indoor heating units, outdoor cooking grills, patio fireplaces, patio firepits or chimineas are permitted.
  - (b) During ozone alerts, particulate alerts or air pollution episodes, only fires in indoor heating units and outdoor cooking grills using clean wood, charcoal, kerosene, propane, or natural gas as fuels are permitted.



(12) Except for fires in indoor heating units, outdoor cooking grills, patio fireplaces, patio firepits or chimineas or as specifically provided in this section, the Agency must receive advance notice of and provide approval for all open burning.

(C) Activities Allowed within the City Limits with Prior Approval from the Agency. Within the City limits, the following types of burning are allowed without an open burn waiver with prior approval from the Agency:

(1) Fire Training. Burning of structures, mobile or modular homes, or vehicles for the purpose of fire training by professional or volunteer fire departments, subject to the requirements in 326 IAC 14-10 and with advance approval from the Agency.

(a) All asbestos-containing material shall be removed before the burning of a structure, mobile or modular home, or vehicle.

(b) Synthetic materials such as, but not limited to, floor tile, carpeting, fiberglass tub and shower enclosures and electrical wire shall be removed from the structure, mobile or modular home.

(c) All fluorescent lamps and ballasts containing polychlorinated biphenyls (PCBs) or mercury must be removed from the structure, mobile or modular home.

(d) The structure, mobile or modular home shall not have been demolished prior to training activities.

(e) All tires, fluids, gases used in the air conditioning system, and electrical switches or devices containing mercury must be removed from the vehicle.

(2) Fire Extinguisher Training. Burning of clean petroleum products for fire extinguisher training, subject to the conditions of this section and the following conditions:

(a) The Agency must approve the training and the local Fire Department must be notified of the training at least 24 hours in advance of the date, time, and location of the burning.

(b) All burning shall take place in a noncombustible container or enclosure, enclosed on all sides and bottom.

(c) A total of no more than 14 gallons of fuel may be burned per day per training event.

(d) Only one fire shall be allowed to burn at a time.

(e) All burning shall be conducted in such a manner so as to prevent any possibility of soil contamination.

(3) Recreational or ceremonial fires, such as:

(a) Ceremonial fires for activities such as flag retirement.

(b) Fires on the ground used solely for recreational or cooking purposes.

(c) Burning conducted for recreational or ceremonial purposes shall be subject to the conditions of this section and the following conditions:

(i) The fire shall be no larger than three feet in diameter and two feet high in size.

(ii) The fire shall not be ignited prior to two hours before the recreational activity is to take place and shall be extinguished upon conclusion of the activity.

(iii) The fire shall not be used for disposal purposes.

(iv) The fire shall not take place within 100 feet of any fuel storage area or pipeline.

(v) Only one fire shall be allowed to burn at a time at the site, unless additional fires are specifically approved by the Director.

(vi) Approval for ceremonial fires shall be limited to three consecutive days. Approvals for recreational fires are issued and renewed annually with written authorization.

(4) Outdoor heating for purposes such as providing heat for persons manning picket lines, using clean wood products in a noncombustible container that is sufficiently vented to induce adequate primary combustion, and has enclosed sides and a bottom. Burning shall be subject to the conditions of this section and to these additional conditions:

(a) Burning shall only occur between October 1st and April 30th unless otherwise approved by the Director.

(b) Burning shall not be conducted for the purpose of disposal.

(5) Maintenance Purposes. The following activities shall be subject to the requirements of this section:

(a) Burning of vegetation from a farm, orchard, nursery or tree farm.

(b) Land management burns conducted by representatives or contractors of the U.S. Department of Agriculture, the U.S. Forest Service, the Indiana Department of Natural Resources, Vanderburgh County or the City of Evansville to facilitate prescribed burning on properties for wildlife habitat maintenance, forestry purposes, natural area management, or ecosystem management. Only vegetation and clean petroleum products may be burned.

(c) Burning of clean petroleum products for the purpose of maintaining or repairing railroad tracks, including the railroad right-of-way, but not including railroad ties.

(6) Other purposes as approved pursuant to an open burn waiver (subsection (E) of this section).

(D) Open Burn Waiver. Within the jurisdiction of the Agency, an open burn waiver, for the purposes listed in this subsection, shall be reviewed on an individual basis by the Director; provided, that:

- (1) Advance written approval is obtained from the Agency. .
- (2) Open burn waivers shall be issued for the day of the event only.
- (3) An open burn waiver shall be granted only under the following conditions unless otherwise stipulated in the open burn waiver and shall in all instances be subject to the conditions of this section:
  - (a) There shall be not more than five residences or structures within 500 feet of the proposed burning site.
  - (b) No burning shall take place within 100 feet of any structure or power line or 300 feet of a public road, fuel storage area, or pipeline.
  - (c) There have been no open burning violations at the site of the proposed burning or by the applicant within the preceding 36 months.
  - (d) The Agency may inspect or request the responding Fire Department to inspect the proposed site and will consider the Fire Department's recommendations when reviewing the open burn waiver Application.
  - (e) After review and inspection, the Application shall be approved in writing by the Director, so long as it meets the requirements of this section, the remainder of the municipal code and the conditions imposed by the Director which shall be deemed reasonably necessary to protect public safety and prevent the creation of a nuisance.
  - (f) The open burn waiver shall be made available at the burning site to local officials upon request.
- (4) Bonfires. An open burn waiver may be issued for bonfires (larger than three feet in diameter and two feet high) for the purposes of celebrating school pep rallies, or sponsored by other nonprofit organizations, within the jurisdiction of the Evansville EPA. The bonfires shall be subject to the conditions of this section and the following conditions:
  - (a) Only clean wood products or charcoal may be burned. Clean petroleum products may be used to assist in starting the fire.
  - (b) The fire shall not be ignited prior to two hours before the recreational activity is to take place and shall be extinguished upon conclusion of the activity.
  - (c) The fire shall not be used for disposal purposes.
  - (d) Only one fire may be allowed to burn at a time at the site.
  - (e) The burn pile may not exceed 10 feet by 10 feet by 10 feet or 1,000 cubic feet.
- (5) Explosive or Dangerous Materials. Burning of highly explosive or other dangerous materials for which no alternative disposal method exists or where transportation of such materials is hazardous.

(E) Emergency Variance. Burning within the City limits may be conducted with prior approval of the Mayor, Director of the Evansville Climate Collaborative, the Evansville Fire Chief, the Evansville Police Chief, the Director of the Emergency Management Agency or the incident commander at the scene in an emergency situation only for the following:

(a) Spilled or escaping liquid or gaseous petroleum products when all reasonable efforts to recover the spilled material have been made and failure to burn would result in an imminent fire or health hazard or air or water pollution problem.

(b) Clean wood waste, vegetation, or deceased animals resulting from a natural disaster where failure to burn would result in an imminent health or safety hazard.

(F) Air Curtain Destructors (Also Known as Air Curtain Incinerators).

(1) Application. An owner or operator of an air curtain destructor shall submit a written Application to the Agency to obtain a permit prior to its installation or operation at a new site. The owner or operator shall not operate the air curtain destructor unless the owner or operator holds a valid permit from the Agency and shall maintain the permit at the air curtain destructor site at all times for verification.

(2) Term. An air curtain destructor permit shall be valid for 60 calendar days.

(3) Approval Conditions. The Director may consider the applicant's preceding 36 months' compliance with this chapter when reviewing an air curtain destructor Application.

(4) In order to obtain an air curtain destructor permit, the owner or operator shall ensure that installation and operation of such air curtain destructor will comply with subsections (H)(5)(a) through (v) of this section.

(5) Burning shall be terminated immediately at any air curtain destructor site which does not comply with this section. The Director may add conditions to the permit as necessary to prevent a public nuisance or protect the public health and safety.

(a) Only untreated wood products shall be burned, except for minimal amounts of uncontaminated petroleum products which may be used for ignition. Merchantable wood products shall not be burned.

(b) Burning shall not be conducted during unfavorable meteorological conditions, including, but not limited to, high winds or air stagnation, extremely dry conditions or when an air pollution alert, an ozone alert, a particulate alert, or a burn ban has been declared.

(c) The air curtain destructor shall not be operated prior to one hour after sunrise, the fire shall not be fed after two hours before official sunset, the fire must be completely extinguished by official sunset, and at least one foot of dirt must be placed over the ashes in the pit by official sunset.

(d) An air curtain destructor site shall be located no less than 500 feet from any private residence, public roadway, power line, structure, business, pipeline or fuel storage area.

(e) If it is not possible for the air curtain destructor to be located in accordance with subsection (H)(5)(d) of this section, the owner or operator may request that the

Director grant an exception to allow the air curtain destructor to be located not less than 250 feet from any private residence, public roadway, power line, structure, business, pipeline or fuel storage area.

(f) An air curtain destructor site shall not be located within 1,000 feet of a landfill or transfer station as defined in 329 IAC 10-2.

(g) An air curtain destructor shall not be permanently located at any site.

(h) An air curtain destructor shall be attended at all times while burning and until combustion is complete. Adequate firefighting equipment shall be maintained at an air curtain destructor site at all times during operation.

(i) Burning shall not create or contribute to an air pollution problem, a public nuisance, or a fire hazard.

(j) An air curtain destructor and pit shall be maintained and operated according to the manufacturer's specifications and recommendations.

(k) The owner or operator shall provide notification in advance to the Agency of the dates and times that the air curtain destructor will be in operation.

(l) The fan blades of the air curtain destructor shall be regularly cleaned to reduce buildup of dirt and debris.

(m) All canisters must be properly aligned, connected, and maintained so as to prevent leaks between adjacent canisters.

(n) The nozzles must be maintained in good working condition. The minimum average velocity at the nozzle must be 9,050 feet per minute, and the airflow at the nozzle must be a minimum of 750 cubic feet per minute per foot of length.

(o) The engine running the air curtain destructor fan must be maintained in proper working condition.

(p) The width of the pit shall not extend beyond the length of the nozzle action.

(q) The distance from the air curtain destructor to the opposite wall of the pit shall not exceed 10 feet.

(r) The depth of the pit shall be of such distance to allow all burning material to be below the curtain of air created by the air curtain destructor.

(s) All nozzles shall be aligned and directed toward the opposite wall so that the air strikes the opposite wall at least three feet below the grade upon which the air curtain destructor is located so that the air tumbles in the pit.

(t) The air curtain destructor shall not be at a higher elevation than the elevation of the opposite wall.

(u) The pit shall be enclosed on four sides, and the walls shall be perpendicular to level ground.

(v) Material being loaded into the pit shall be picked up and dropped into the pit, and at no time shall the material protrude through the curtain of air while burning.

(6) Approval Revocation. The Director may, upon good cause, revoke an air curtain destructor permit if the owner or operator:

(a) Violates any requirements of this section.

(b) Violates any condition of the permit.

(c) Violates any other local rule or ordinance pertaining to the installation or operation of air curtain destructors.

(d) Falsifies information on an Application for a permit.

(e) Operates an air curtain destructor in a manner which is hazardous to the public health or safety.

(7) The fees hereunder shall be as provided in EMC 16.05.300.

(G) Salvage. No person shall conduct any salvage operation or open dump by open burning. No person shall burn, cause, or allow the burning of any waste in a manner which violates this section.

(H) Violation of this Section. Violation of this section may result in revocation of waiver, permit, or variance, and the issuance of a citation or request for legal action for the collection of the fines provided by EMC 16.05.510 or other enforcement provided in EMC 1.05.170.

(I) Responsibility for Fire. Any property owner or person who allows the accumulation or existence of combustible material which constitutes or contributes to a fire found to be in violation of this section may not refute responsibility for violation of this section on the basis that said fire was set by vandals, was accidental, or was an act of God.

#### || **16.05.210 Reserved for future use.**

Reserved.

#### || **16.05.220 Reserved for future use.**

Reserved.

#### || **16.05.230 Reserved for future use.**

Reserved.

#### || **16.05.240 Volatile organic compound (VOC) emissions.**

The City of Evansville hereby incorporates 326 IAC 8 by reference. To the extent that any provisions of 326 IAC are incorporated herein, any amendments to 326 IAC as may be made from time to time are also incorporated herein by this reference. Whenever there is a conflict between the incorporated 326 IAC language and the municipal code, the more stringent shall apply.

In addition to the applicable sections of 326 IAC 8, facilities within the jurisdiction of the Agency required by EMC 16.05.270 to obtain a certificate of operation shall also comply with the following requirements:

(A) All materials such as, but not limited to, paper or cloth, if contaminated with solvents, primers, coatings, paints or other materials with a VOC content greater than zero, shall be stored in closed containers until disposed of off site. The containers shall remain closed unless being filled or emptied.

(B) All fresh or used solvent, waste coatings, and other materials with a VOC content greater than zero shall be stored in closed containers.

(C) Storage containers and equipment shall be free from cracks, holes, and leaks.

(D) Equipment cleanup shall be performed with methods that minimize the use of solvents. Reasonable efforts shall be made to reclaim the bulk of used solvents. No cleaning shall be performed by direct spraying of solvents into the atmosphere.

(E) Effort shall be made to schedule operations of a similar nature to significantly reduce total volatile organic compound material consumption.

(F) Coatings or surface preparation products shall be applied in a manner that minimizes overspray.

(G) All VOC-contaminated waste materials must be disposed of in such a manner as to minimize emissions.

#### || **16.05.250 Reserved for future use.**

Reserved.

#### || **16.05.260 Reserved for future use.**

Reserved.

#### || **16.05.270 Permits – Construction/installation and operation.**

(A) Applicability. No person shall construct, install, modify, or operate any stationary or portable process equipment which has potential emissions of any regulated air pollutant without a certificate of operation issued pursuant to this section.

(1) If the construction, installation, modification or operation of the stationary or portable process equipment is subject to the requirements of 326 IAC 2, the Director may defer issuance of a municipal certificate of operation until the State-level permit has been issued.

(2) The Director may defer issuing municipal certificates of operation until zoning approvals, special use permits and certificates of occupancy are issued.

(B) Repair or Replacement. No person shall install, repair in excess of 30 percent of the original cost, or alter any equipment without a construction/installation permit.

(C) Exemptions. The following sources are exempt from the requirements of this section:

- (1) Domestic heating equipment.
- (2) Emergency repairs.
- (3) Gas-fired equipment used solely for space heating which have less than 5,000,000 BTU/hour input capacity.
- (4) Emergency generators, operating less than 500 hours per calendar year.
- (5) Open burn waivers issued pursuant to EMC 16.05.200(D).
- (6) Emergency variances issued pursuant to EMC 16.05.200(E).
- (7) Air curtain destructor permits issued pursuant to EMC 16.05.200(F).
- (8) Sources and activities specifically exempted elsewhere in this chapter.
- (9) For sources exempt from the requirements of 326 IAC 2, the Director may determine the source's actual or potential emissions of regulated pollutants are unlikely to be detrimental to human health or the environment. In such cases, the Director may exempt the source from the requirements of this section by issuing a municipal exemption letter.

(D) Applications. Applications for construction/installation permits and operation permits shall contain a set of plans for the equipment and all necessary technical information available describing the equipment and other reasonable and pertinent information that may be required.

(E) Review Period. Applications shall be acted upon within a reasonable period of time. After receipt of a complete and accurate permit Application, 60 days for local review and issuance is considered reasonable in most cases.

(F) Municipal-Level Permits. Facilities exempt from the permitting requirements found in 326 IAC, but which are subject to the permitting requirements of this chapter, shall be issued a municipal certificate of operation (permit) by this Agency.

(G) Concurrent State/Municipal Permits. The Director may issue a municipal certificate of operation to a facility that has also been issued a State-level permit pursuant to 326 IAC 2. The Director may defer issuance of a municipal certificate of operation until the State-level permit has been issued.

(H) Municipal certificates of operation issued by the Agency shall contain at a minimum:

- (1) A description of the permitted equipment.
- (2) Such conditions as necessary to ensure the facility's compliance with all applicable rules of this chapter.
- (3) All applicable rule citations.
- (4) Monitoring, testing, reporting, and record keeping requirements as necessary to determine the source's compliance with all applicable rules of this chapter.



(5) A requirement for the facility to submit a throughput report providing the information on usage of raw materials, fuel and other materials as requested by the Agency by the date specified by the Agency.

(6) A requirement for the facility to submit an annual fee as set forth in EMC 16.05.320. Invoices shall be provided annually by the Agency and shall be paid by the date specified by the Agency.

(7) An expiration date.

(a) A construction/installation permit shall be valid for six months from the date of issuance and shall require the facility to notify the Agency when the construction or installation is completed within 30 days of completion.

(b) Municipal certificates of operation shall be valid for five years and shall expire on the last day of the month specified.

(c) Municipal certificates of operation will be reviewed and renewed by the Agency upon request or Application initiated by the source.

(i) There shall be no fee required for the renewal of a municipal certificate of operation.

(ii) The source may continue to operate under the requirements of the previous municipal certificate of operation until such time as the renewed permit is issued, as long as renewal Application has been initiated by the expiration date of the previous permit. However, this does not relieve the source of the obligation to comply with applicable sections of this chapter.

## **16.05.280 Violation – Revocation of permit.**

(A) Enforcement Actions. A source issued a permit to construct or operate by this Agency shall be subject to enforcement actions as described in EMC 16.05.070 and/or revocation of said permit for any of the following causes:

(1) Violation of any conditions of the permit.

(2) Failure to disclose all the relevant facts, or misrepresenting any relevant facts when applying for the permit.

(3) Failure to pay the required fees as identified under EMC 16.05.300, 16.05.310 or 16.05.320 by the stated deadline.

(4) Failure to submit annual throughput report or emissions inventory statement by the stated deadline.

(5) Violations of any portion(s) of this chapter.

(6) Changes in regulatory requirements that mandate either a temporary or permanent reduction of discharge of contaminants; however, the amendment of appropriate sections of a permit shall not require revocation of a permit.

(7) Noncompliance with orders issued pursuant to EMC 16.05.010 to reduce emissions during an air pollution episode.

(8) Any other cause which establishes in the judgment of the Agency the fact that continuance of the permit is not consistent with the purposes of this chapter.

(B) Revocation. Additionally, the Agency may revoke a permit to construct if the construction of the facility is not begun within 18 months from the date of the issuance of the permit or if, during the construction of the facility, work is suspended for a continuous period of one year or more.

(C) A permit may be revoked upon receipt of a written request from the facility or after notice and a hearing before the Board.

### **16.05.290 Transfer of permits and relocation of sources.**

(A) In the event that the name or ownership of a source facility is changed, the Agency shall be notified by the current owner or operator no later than 30 days after the effective date of the change. Notification shall include the date of said change in name or ownership. The written notification required above shall be sufficient to transfer the permit from the current name and/or owner or operator of the source or facility to the new name and/or owner. No fee for this transfer will be charged. The Agency shall reserve the right to issue a new permit.

(B) In the event that a source or facility issued a permit pursuant to EMC 16.05.270 relocates to another physical location within the jurisdiction of the Agency, the Agency shall be notified of the relocation in advance of the facility's relocation. A fee for this transfer will be charged, pursuant to EMC 16.05.300. The Agency shall reserve the right to issue a new permit.

(C) Any portable source or facility proposing to relocate within the jurisdiction of the Agency and which has been issued a valid operating permit by IDEM may be issued an operation permit by the Agency. A fee for relocation will be charged pursuant to EMC 16.05.300. The Agency shall be notified of any proposed relocation of such source or facility at least 30 days prior to said relocation.

(D) No later than 10 business days after the portable source has been removed from Agency jurisdiction, the owner or operator of the portable source shall notify the Agency in writing of its removal.

### **16.05.300 Fees – General.**

(A) Air Curtain Destructor. An air curtain destructor permit issued pursuant to EMC 16.05.200(F) shall be assessed a fee of \$550.00, \$100.00 of which is payable at the time of the Application for site review.

(B) Public Hearing. A fee of \$400.00 shall be submitted upon billing for each public hearing conducted prior to issuance of the permit.

(C) Public Notice. If a public notice is required as part of the operation permit issuance process, an additional \$100.00 fee will be assessed.

(D) Waiver / Variance. There is no fee for a waiver or variance issued pursuant to EMC 16.05.200(D).

(E) Modification to an existing permit for a change in location shall be assessed a fee of \$50.00.

(F) Portable Source. Relocation for portable source: \$110.00 per permit.

(G) Method of Payment. Fees shall be paid by mail or in person and shall be paid upon billing by check or money order, payable to the "City of Evansville" by the date specified on the invoice. The Agency, at the discretion of the Director, may defer consideration of, or action upon, any Application or request until the appropriate payment is received.

### **16.05.310 Fees – Construction or installation of new facilities or equipment.**

(A) Initial Fee. A \$100.00 filing fee is due upon submittal of Application for any construction or installation permit, except as provided by subsections (C) and (D) of this section.

(B) An additional fee of \$65.00 shall be assessed for the staff evaluation and/or issuance of any construction or installation permit for any municipal source.

(C) Municipal Exemption. There shall be no fee required for the issuance of a municipal exemption letter.

(D) Pollution Control Device. Fees for installation of pollution control devices shall be waived.

(E) Method of Payment. Fees shall be paid by mail or in person and shall be paid upon billing by check or money order, payable to the "City of Evansville" by the date specified on the invoice. The Agency, at the discretion of the Director, may defer consideration of, or action upon, any Application or request until the appropriate payment is received.

### **16.05.320 Annual operating fees.**

(A) Annual operating fees shall be as follows:

(1) Title V. Sources operating under permits issued pursuant to 326 IAC 2-7 (Title V) shall be assessed a municipal annual operating fee of \$1,000.00 per year.

(2) FESOP. Sources operating under Federally enforceable State operating permits (FESOP) issued pursuant to 326 IAC 2-8 shall be assessed a municipal annual operating fee of \$750.00 per year.

(3) SSOA. Sources operating under source-specific operating agreements (SSOA) as defined in 326 IAC 2-9 shall be assessed a municipal annual operating fee of \$500.00 per year.

(4) MSOP. Sources operating under minor source operating permit (MSOP) as defined in 327 IAC 2-6.1 shall be assessed a municipal annual operating fee of \$500.00 per year.

(5) Permit by Rule. Sources operating under permit by rule (PBR) as defined in 326 IAC 2-10 shall be assessed a municipal annual operating fee of \$250.00 per year.

(6) Registration. Sources operating as a registration as defined in 326 IAC 2-5.5 shall be assessed a municipal annual operating fee of \$150.00 per year.

(7) Municipal. Municipal sources or sources issued an exemption pursuant to 326 IAC 2-1.1-3 shall be assessed a municipal annual operating fee of \$100.00 per year.

(B) Method of Payment. Fees shall be paid by mail or in person and shall be paid upon billing by check or money order, payable to the "City of Evansville" by the date specified on the invoice. Nonpayment shall result in enforcement actions pursuant to EMC 16.05.070 or cancellation of the permit.

### **16.05.330 Fees – Exemption.**

Churches, school corporations, libraries and other City and County agencies, but not including State or Federal agencies, are exempt from the fees imposed pursuant to:

(A) EMC 16.05.300(D), (E) and (F).

(B) EMC 16.05.310(A) and (B).

(C) EMC 16.05.320. [Ord. G-2010-11 § 1, passed 4-13-10; Ord. G-2006-30, passed 1-10-07. 1983 Code § 3.30.227.]

### **16.05.340 Fees – Application withdrawal, denial, or revocation.**

Fees shall be nonrefundable. If the Application is withdrawn or denied or if the document is revoked, the fee shall neither be refunded nor applied to any subsequent Application or reapplication.

### **16.05.350 Reserved for future use.**

Reserved.

### **16.05.360 Fees – Deposit.**

All fees and penalties shall be deposited in the General Fund of the City.

### **16.05.370 Testing.**

(A) The Agency is authorized to conduct a test necessary for detection of pollution.

(B) The Agency shall notify affected parties of the necessity for testing. The affected parties may elect to perform the necessary tests; provided, however, the Agency must receive notice of the time and date of the test a minimum of five business days prior to the date of the test. The Agency may elect to be present during any or all of the testing.

(C) The Director may require stack testing, monitoring, or reporting at any time to assure compliance with all applicable requirements. Any monitoring or testing shall be performed in accordance with 326 IAC 3 or other methods approved by the Director, the Commissioner or the U.S. EPA. This section applies to all sources subject to the requirements of EMC 16.05.270.

### **16.05.380 Rules.**

The Agency with the approval of the Board, or the Board, may establish reasonable rules and regulations for the effective implementation of this chapter. The rules must be approved in writing by the City's Legal Department.

### **16.05.390 Reserved for future use.**

Reserved.

|| **16.05.470 Reserved for future use.**

Reserved.

|| **16.05.480 Reserved for future use.**

Reserved.

|| **16.05.490 Reserved for future use.**

Reserved.

|| **16.05.500 Automobile refinishing.**

(A) Applicability. This section applies to any person who owns, leases, operates, or controls a facility that refinishes motor vehicles or mobile equipment in the jurisdiction of the Agency.

(B) Exemptions. The following activities are exempt from this section:

(1) Application of aerosol coating products (spray paint cans).

(2) Graphic design application.

(3) Touch-up coating application.

(4) This section does not apply to individuals who own, lease, operate, or control a facility that refinishes three or fewer motor vehicles or mobile equipment (or equivalent mass) per calendar year.

(C) Definitions.

“Aerosol coating products” means a mixture of resins, pigments, liquid solvents, and gaseous propellants packaged in a disposable can for handheld application (also known as spray cans).

“Application station” means the part of an automobile refinishing facility where coatings are applied.

“Automobile refinishing” means refinishing operations for after-market motor vehicles or mobile equipment performed in auto body and repair shops, production paint shops, new car dealer repair and paint shops, fleet operation repair and paint shops, and any other facility which coats vehicles under the Standard Industrial Classification (SIC) Code 7532 (top, body, and upholstery repair shops and paint shops), or the North American Industry Classification System (NAICS) 811121 including dealer repair of vehicles damaged in transit.

“Coating” means a protective, decorative, or functional material with VOC content greater than zero used in automobile refinishing operations.

“Container” means a vessel or tank used to store coatings, surface preparation products, solvents, or waste.

“Disposed off site” means sending outside of the refinishing facility the used coatings, surface preparation products, solvents, or wastes.

“Electrostatic application” means the application to a substrate of charged atomized paint droplets which are deposited by electrostatic attraction.

“Equipment” means devices that are used to transfer or apply coating, surface preparation product, or solvent, such as, but not limited to, spray guns and brushes or nonrefillable aerosol cans.

“Graphic design application” means the application of logos, letters, numbers, and graphics to a painted surface, with or without the use of a template.

“High-volume, low-pressure (HVLP) spray” means technology used to apply coating to a substrate by means of coating application equipment which operates between one-tenth and 10 pounds per square inch gauge (psig) air pressure measured dynamically at the center of the air cap and at the air horns of the spray system.

“Material safety data sheet” or “MSDS” means the chemical, physical, technical, and safety information document supplied by the manufacturer of the coating, solvent, or other chemical product, usually through the distribution network or retailers.

“Mobile equipment” means any equipment which may be driven or drawn on a roadway, including, but not limited to, the following:

- (a) Truck bodies.
- (b) Truck trailers.
- (c) Cargo vaults.
- (d) Utility bodies.
- (e) Camper shells.
- (f) Construction equipment such as mobile cranes, bulldozers, and concrete mixers.
- (g) Farming equipment such as tractors, plows, and pesticide sprayers.
- (h) Miscellaneous equipment such as street cleaners, golf carts, ground support vehicles, tow motors, and fork lifts.

“Motor vehicles” means the following:

- (a) Automobiles.
- (b) Buses.
- (c) Trucks.

- (d) Vans.
- (e) Motor homes.
- (f) Recreational vehicles.
- (g) Motorcycles.

“Primer” means any coating applied to a substrate prior to the application of a topcoat for the purpose of providing corrosion resistance, adhesion of subsequent coatings, or color uniformity.

“Primer sealer” means any coating applied to a substrate prior to the application of a topcoat to:

- (a) Provide corrosion resistance, adhesion of the topcoat, and color uniformity; and
- (b) Promote the ability of an undercoat to resist penetration by the topcoat.

“Primer surfacer” means any coating applied to a substrate prior to the application of a topcoat to:

- (a) Provide corrosion resistance and adhesion of the topcoat; and
- (b) Promote a uniform surface by filling in surface imperfections.

“Refinishing” means any coating of motor vehicles, parts, and components or mobile equipment, including partial body collision repairs, for the purpose of protection or beautification and which is subsequent to the original coating applied at an original equipment manufacturing (OEM) plant coating assembly line.

“Refinishing job” means for each motor vehicle or piece of mobile equipment any or all of the following:

- (a) Surface preparation.
- (b) Primer application.
- (c) Primer surfacer application.
- (d) Primer sealer application.
- (e) Topcoat application.

“Repair coating” means a coating that is used in the repair of a motor vehicle or mobile equipment.

“Reused on site” means the reuse of a coating, surface preparation product, or solvent in the refinishing facility.

“Solvent” means a liquid containing volatile organic compounds that is used for dissolving or dispersing constituents in a coating, adjusting the viscosity of a coating, or cleaning application stations, equipment, or containers.

“Spot repairs” means repairs to motor vehicles in which the damaged area to be repaired is limited to only a portion of any given panel so that an entire panel need not be repaired.

“Substrate” means the surface onto which coatings or surface preparation products are applied.

“Surface preparation products” means products with VOC content greater than zero used to remove wax, tar, grease, and other undesirable contaminants from the surface to be refinished.

“Topcoat” means the final film or series of films of coating applied to a substrate for the purpose of protection or appearance.

“Touch-up coating” means a coating applied by brush or handheld, nonrefillable aerosol cans to repair minor surface damage and imperfections.

“VOC content of coating or surface preparation products” means the weight of VOC, less water, and less exempt solvent, per unit volume, of coating or surface preparation product.

(D) Requirements. On and after July 1, 1998, unless an alternate compliance date is specifically provided for within an individual subsection, any person applying any coating or surface preparation product in the jurisdiction of the Agency shall comply with the requirements of this section.

(E) Work Practice Standards. The owner or operator of a refinishing facility subject to this section shall use one or a combination of the following equipment for coating application:

(1) Electrostatic equipment.

(2) High volume low pressure (HVLP) spray equipment.

(3) Any other coating application equipment that has been demonstrated, by the owner or operator, to the satisfaction of the Director to be capable of achieving at least 65 percent transfer efficiency.

The owner or operator must submit sufficient data for the Director to be able to determine the accuracy of the transfer efficiency claims.

(4) Coating application equipment shall be operated and maintained according to the manufacturer’s recommendations.

(F) Housekeeping Requirements. The owner or operator of a refinishing facility subject to this section shall implement housekeeping practices which include the following:

(1) All paper or cloth used for activities such as surface preparation and surface cleanup, if contaminated with solvents, primers, coatings, paints or other materials with a VOC content greater than zero, shall be stored in closed containers until disposed of off site. The containers shall remain closed unless being filled or emptied.



(2) All fresh or used solvent, waste coatings, and other materials with a VOC content greater than zero shall be stored in closed containers.

(3) Storage containers and equipment shall be free from cracks, holes, and leaks.

(4) Equipment cleanup shall be performed with methods that minimize the use of solvents. Reasonable efforts shall be made to reclaim the bulk of used solvents. No cleaning shall be performed by direct spraying of solvents into the atmosphere.

(5) Effort shall be made to schedule operations of a similar nature to significantly reduce total volatile organic compound material consumption.

(6) Coatings or surface preparation products shall be applied in a manner that minimizes overspray.

(7) All VOC-contaminated waste materials must be disposed of in such a manner as to minimize emissions.

(8) Filters must be in place when booth is operating.

(9) Visual inspections for overspray must be made once a month while the spray paint booth is in operation.

(10) Perimeter checks in areas potentially affected by overspray must be conducted once every calendar quarter.

(G) Training Requirements. The owner or operator of a refinishing facility shall comply with the training requirements of this section as follows:

(1) Develop a Written Training Program. The training program may include training provided by the manufacturer or supplier and shall include written procedures and hands-on demonstration, as appropriate, on the following topics:

(a) Application of coatings, surface preparation products, or organic solvents using techniques that minimize their usage.

(b) Operation and maintenance of spray gun cleaning equipment to minimize evaporation of organic solvents to the atmosphere.

(c) Work practice standards established in this section.

(2) Provide initial training to any new employee performing one or more of the activities listed in subsection (F) of this section within 180 days of the date of their employment. Such training shall be appropriate to the job responsibilities of the employee.

(3) Provide annual refresher training by July 1st of each year.

(H) Compliance Procedures.

(1) The owner or operator of a refinishing facility subject to this section shall submit to the Agency a statement signed by a responsible official of the facility, certifying that the facility will continuously comply with all the requirements contained within this section.

(2) After March 3, 2003, upon Application for a City of Evansville certificate of operation (operating permit), the owner or operator of a refinishing facility subject to this section shall submit to the Agency a statement signed by a responsible official of the facility, certifying that the facility will continuously comply with all the requirements contained within this section.

(I) Record Keeping.

(1) Owners or operators of refinishing facilities subject to the provisions of this section shall keep records of the following:

(a) Training records shall consist of the following:

(i) The date training was completed.

(ii) A list of persons, by name and activity and the topics in which they have been trained.

(iii) A statement signed by the trainer certifying each trainee who satisfactorily has completed training in the topics and is proficient in the procedures specified in subsection (G) of this section.

(b) Accurate records of annual usage of each VOC-containing material.

(c) Material safety data sheets (MSDSs) for each VOC-containing material used.

(d) Equipment specifications and manufacturer's manuals.

(e) Records of any roof or perimeter inspections required by the operating permit.

(f) Other records as required by the operating permit.

(g) A record must be kept of the visual inspections required by subsection (F)(9) of this section and must be available for review by the Agency for three years.

(h) A record must be kept of the quarterly perimeter checks required by subsection (F)(10) of this section and must be available for review by the Agency for three years.

(2) Owners or operators of refinishing facilities affected by this section shall maintain all records for a minimum of three years and shall make records available to the Agency upon request.

(J) Reporting. Each automobile refinishing facility shall report annual throughput usage of raw materials. The report will be on a form provided by the Agency and will be due by the date specified on that form.

(K) Violations and Penalties. Upon notice, the Director or his agents are authorized to enter the premises of any person subject to this section for the purpose of investigating noncompliance reports and to verify compliance measures set forth in this section. If entry is denied, a court order may be sought by the Director or his agents in the Vanderburgh Superior or Circuit Court to permit

such entry upon the property. Failure to comply with any provision of this section constitutes a violation of this section and is subject to the penalties set forth in EMC 16.05.510.

## **16.05.510 Penalties.**

(A) In accordance with EMC 16.05.070, unless specifically provided for in this section, monetary penalties for violations of this chapter occurring within a 36-month period shall not be less than those provided by the following:

(1) First violation: \$50.00.

(a) The Director may issue a letter of violation without a monetary penalty for the first violation.

(b) If the Director issues only a letter of violation, if a second violation is determined within a 36-month period from the date of the first violation, the minimum monetary penalty shall begin at \$50.00 for the second violation.

(2) Second violation: \$150.00.

(3) Third violation: \$500.00.

(4) Fourth violation: \$1,500.

(5) Fifth and subsequent violations: \$1,500 to \$7,500.

(B) Each rule of this chapter wherein a violation occurs, and each day of violation, shall be counted as a separate offense. Violations prior to the effective date of the ordinance codified in this chapter shall be included in the calculation of the number of offenses. Penalties may be assessed for violations per rule, per day. The maximum monetary penalty shall be \$7,500 per day, per violation.

(C) After the Director has determined that four or more violations of this chapter have occurred at the same location or by the same person or company on one or more days within a six-month period, the Director may, subject to appeal to the Board, cause the immediate cessation of work on all or part of the project or at the facility until the conditions causing the violation(s) have been corrected.

(D) The Director, subject to appeal to the Board, may suspend, cancel or refuse to issue or renew any applicable permit provided in this chapter relating to the violation committed.

(E) If the Director's action pursuant to subsections (C) and/or (D) of this section is appealed, the Board shall fix a place and time not less than 48 hours or more than 72 hours (excluding Saturdays, Sundays and legal holidays) thereafter for a hearing to be held before the Board. Not more than 24 hours after the commencement of such a hearing, the Board shall affirm, modify or set aside the order of the Director.

(F) Violation of EMC 16.05.110(D) shall be assessed a penalty of not less than \$100.00 and not more than \$7,500 per violation, per day.

(G) Any person assessed a penalty pursuant to this section may appeal to the Board by following the provisions of EMC 16.05.080(A).

(H) The Board may affirm, modify or set aside actions taken by the Agency under EMC 16.05.070 and this section. The Board may waive, modify or stay all or part of the assessed penalty.

(J) Automobile Refinishing Penalties. Penalties for violations of EMC 16.05.500 (automobile refinishing) regulations shall be as follows:

(1) The fine for a violation of EMC 16.05.500(E)(1), (2) or (3) shall be not less than \$1,000 nor more than \$2,500 per violation.

(2) The fine for a violation of EMC 16.05.500(F) shall be:

(a) Fifty dollars for the first offense.

(b) One hundred dollars for the second offense within a 36-month period.

(c) Two hundred fifty dollars thereafter, within a 36-month period.

(3) The fine for a violation of EMC 16.05.500(G) shall be \$50.00 per employee.

(4) The fine for a violation of EMC 16.05.500(H) shall be \$100.00.

(5) The fine for a violation of EMC 16.05.500(I) or (J) shall be as provided in subsection (A) of this section.

Section 2. Severability. If any provision of this Ordinance is found to be invalid, the remaining provisions of this Ordinance shall not be affected by such a determination. Such other provisions of this Ordinance shall remain in full force and effect without the invalid provision.

Section 3. Effective Date. This Ordinance shall be in full force and effect after its passage by the Common Council of the City of Evansville.

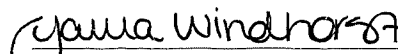
PASSED BY the Common Council of the City of Evansville, Indiana, on the 26 day of February, 2024, and on said day signed by the President of the Common Council and attested by the City Clerk.

ATTEST:



Alex Burton

Vice President of the Common Council



Laura Windhorst, City Clerk

City of Evansville, Indiana

Presented to me, the undersigned, City Clerk of the City of Evansville, Indiana, and to the Mayor of said City, the 28 day of February, 2024, at 10 o'clock A.m. for her consideration and action thereon.

Laura Windhorst  
Laura Windhorst, City Clerk  
City of Evansville, Indiana

Having examined the foregoing ordinance, I do now, as Mayor of the City of Evansville, Indiana, approve said ordinance and return the same to the City Clerk this 28<sup>th</sup> day of February, 2024, at 12:24 o'clock p.m.

Stephanie Terry  
Stephanie Terry, Mayor  
City of Evansville, Indiana

Trockman ✓  
Mosby ✓  
Burton ✓  
Koehler Lindsey ✓  
Brinkmeyer ✓

Allen ✓  
Green ✓  
Johnson ✓  
Heronemus —  
PASSED 8-0